CHAPTER 8.
Exploration of Possible Causes of Any Disparities

Five areas of questions emerge from the disparities observed in MBE/WBE utilization on GDOT contracts:

A. Are disparities found in some regions of the state and not in others?

B. Is there any difference in disparities for 2009 compared with January 2010 through June 2011?

C. Are there disparities for GDOT construction contracts?

D. Are there disparities for GDOT engineering contracts?

E. Is there any evidence of "overconcentration" of DBEs in certain types of work?

Answers to these questions may be relevant as GDOT considers whether all or how much of its overall annual DBE goal can be met through race- and gender-neutral means and what measures may be needed in implementing the federal regulations. In accordance with the Federal DBE Program, results may also help the Department, if necessary, identify the specific racial/ethnic/gender groups that might be included in any future race- or gender-conscious programs.

A. Are disparities found in some regions of the state and not in others?

The study team examined disparity analysis results individually for four regions of Georgia:

- North;
- Atlanta Metropolitan Area;
- Middle; and
- South.

The disparity results for these regions mirrored those for the state as a whole.

MBE/WBE utilization and availability were very similar for the North, Middle and South regions when examining combined FHWA- and state-funded GDOT contracts. MBE/WBE availability was in the range of 20 to 25 percent in these regions and utilization of minority- and women-owned firms totaled between 12.7 to 14.3 percent. The disparity index was 50 in North region, 66 in South Georgia and 71 in Middle Georgia, each indicating a substantial disparity for MBE/WBEs overall, even with the DBE Program in place for many of these contracts.

MBE/WBE utilization for 2009 through June 2011 was somewhat lower for GDOT contracts in the Atlanta Metropolitan Area (8.2%), resulting a correspondingly more severe disparity— an index of 37.

In sum, it does not appear that disparities in the utilization of MBE/WBEs in GDOT contracts are found in some regions of the state and not in others. Appendix K provides detailed utilization and disparity results for each region, beginning with Figure K-35.

B. Is there any difference in disparities for 2009 compared with January 2010 through June 2011?

BBC examined whether there was any trend in MBE/WBE utilization and overall disparity results between the first year of the study period and the ending 18 months.

- GDOT utilization of minority- and women-owned firms was 13.5 percent for contracts GDOT awarded in 2009 and 11.4 percent for contracts awarded from January 2010 through June 2011.

- Disparities in overall utilization of MBE/WBEs were similar between these time periods (disparity index for MBE/WBEs of 59 for 2009 and 54 for 2010–June 2011).

K-29 and K-32 in Appendix K provide detailed results for these two time periods.

C. Are there disparities for GDOT construction contracts?

BBC examined several questions concerning disparity results for GDOT construction contracts:

1. Are there disparities for MBEs and WBEs on GDOT construction contracts?

2. Is it possible that MBE/WBE capacity is "used up" on FHWA-funded construction contracts, which would cause low MBE/WBE utilization on state-funded contracts?

3. Do results differ for construction prime contracts and subcontracts?

4. Are there disparities in the use of MBE/WBE prime contractors for small construction contracts?

5. Are there different results for subcontracts on FHWA-funded contracts and state-funded construction contracts?

6. Does analysis of MBE/WBE bids on construction prime contracts help to explain disparity results?

7. Do GDOT bid processes for construction contracts explain any of the disparities?

1. Are there disparities for MBEs and WBEs on GDOT construction contracts? As discussed in Chapter 6, 12.7 percent of GDOT construction contract dollars from 2009 through June 2011 went to minority- and women-owned firms. However, MBE/WBE utilization on state-funded contracts (where GDOT set no DBE contract goals) was just 4.8 percent compared with 13.2 percent MBE/WBE utilization on FHWA-funded contracts, for which GDOT typically set DBE contract goals.

BBC compared utilization of minority- and women-owned firms on GDOT construction contract with what might be expected based upon the availability analysis for those contracts. Combining FHWA- and state-funded construction contracts, the 12.7 percent MBE/WBE utilization was substantially below the 21.7 percent utilization that might be expected from the availability analysis. The disparity index was 58, as shown in Figure K-5 of Appendix K. There were substantial disparities for African American- and Asian-Pacific American-owned firms but not for other groups. Disparity results for just FHWA-funded contracts were very similar (see Figure 8-1 on the following page and Figure K-6 in Appendix K).

BBC examined whether the lower MBE/WBE utilization on state-funded contracts could be explained by different types, sizes and locations of these contracts.

- The availability analysis indicates higher MBE/WBE availability for state-funded contracts (25.5%) than for FHWA-funded contracts (21.5%). Therefore, differences in types, sizes and locations of contracts cannot explain the differences in MBE/WBE utilization between state- and FHWA-funded contracts. Figures K-6 and K-7 in Appendix K provide these results.

- The disparity index for MBE/WBEs for GDOT state-funded construction contracts was 19, a substantial disparity. In other words, MBE/WBEs received less than 20 cents of every dollar of utilization on state-funded construction contracts that might be expected from the availability analysis for those contracts.

- There were substantial disparities in the utilization of WBEs and African American-, Asian-Pacific American-, Subcontinent Asian American-, Hispanic American- and Native American-owned firms on state-funded contracts.

- The absence of DBE contract goals is the key difference in the level of MBE/WBE participation on GDOT's state- and FHWA-funded construction contracts, which appears to affect results for each MBE/WBE group.

Figure 8-1 compares disparity results for GDOT's FHWA- and state-funded construction contracts.

Figure 8-1.
Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on GDOT FHWA- and state-funded construction contracts, 2009–June 2011

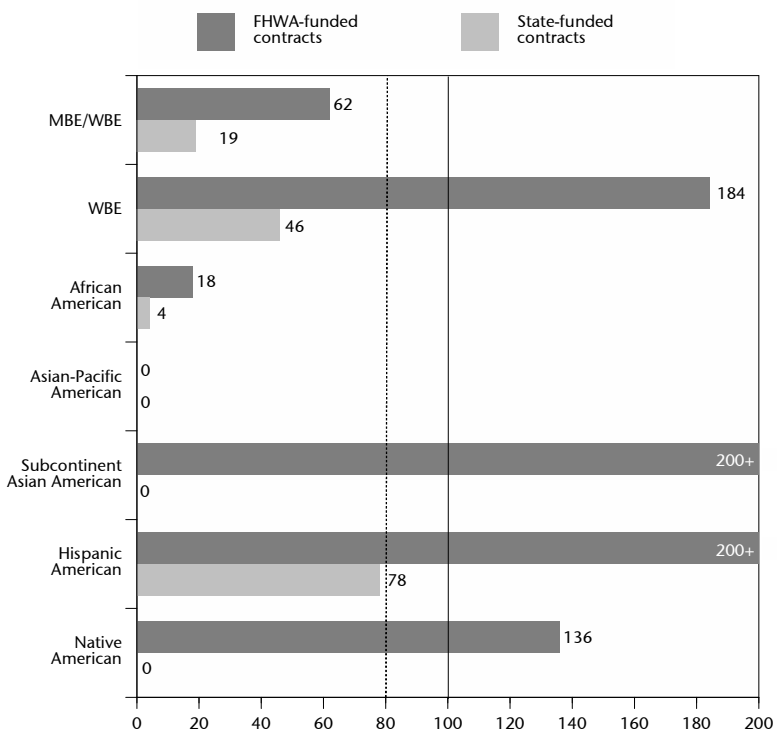
Note:

Number of contracts/subcontracts analyzed is 3,740 for FHWA-funded and 410 for state-funded contracts.

For more detail, see Figures K-6 and K-7 in Appendix K.

Source:

BBC Research & Consulting.



2. Is it possible that MBE/WBE capacity is "used up" on FHWA-funded construction contracts, which would cause low MBE/WBE utilization on state-funded contracts? BBC explored whether low MBE/WBE utilization on GDOT state-funded contracts could be caused by MBE/WBEs being drawn to participate in FHWA-funded contracts (for which DBE contract goals often apply), which exhausted their "capacity." This line of reasoning follows that MBE/WBEs would then have little remaining capacity to work on state-funded construction contracts. Although this possibility may occur for certain individual DBE contractors, this theory does not appear to accurately portray overall MBE/WBE utilization and availability on GDOT contracts.

- As explained in Chapter 5, BBC's availability analysis incorporates the "bid capacity" of minority-, women- and majority-owned firms as reported in the telephone interviews with those firms. (Firms are only counted for contracting opportunities that are of a size that they have bid on or performed in the past.) Firms are treated equally in the availability analysis based on the information collected from each business without regard to the race/ethnicity/gender ownership. Therefore, the availability analysis incorporated any differences in bid capacity between MBE/WBEs and majority-owned firms. Disparities were still evident for state-funded contracts.

- Most of the MBE/WBEs counted in the availability analysis are not DBE-certified. (As mentioned in Chapter 5, fewer than one-in-five MBE/WBEs in the availability analysis were certified as DBEs.) Even if some DBEs chose to concentrate on contracts with DBE goals, such firms would represent only a portion of the available MBE/WBE firms.

- In the 2009 through June 2011 study period, the "gap" between actual MBE/WBE utilization on FHWA-funded contracts and what might be expected from the availability analysis amounted to $162 million. This amount exceeds the total dollars of state-funded construction contracts examined from 2009 through June 2011 ($111 million). There is no evidence that, on aggregate, MBE/WBE "capacity" was used up on FHWA-funded contracts. If MBE/WBEs won all state-funded prime, $41 million in "gap" between overall utilization and availability would still remain.

- There was more utilization of DBEs (2.7%) than non-DBE-certified MBE/WBEs (2.1%) on state-funded construction contracts, a result that is inconsistent with the theory that FHWA-funded contracts with DBE contract goals use up the "capacity" of DBEs faster than non-DBEs.

3. Do results differ for construction prime contracts and subcontracts? BBC explored differences in MBE/WBE utilization for construction prime contracts and subcontracts.

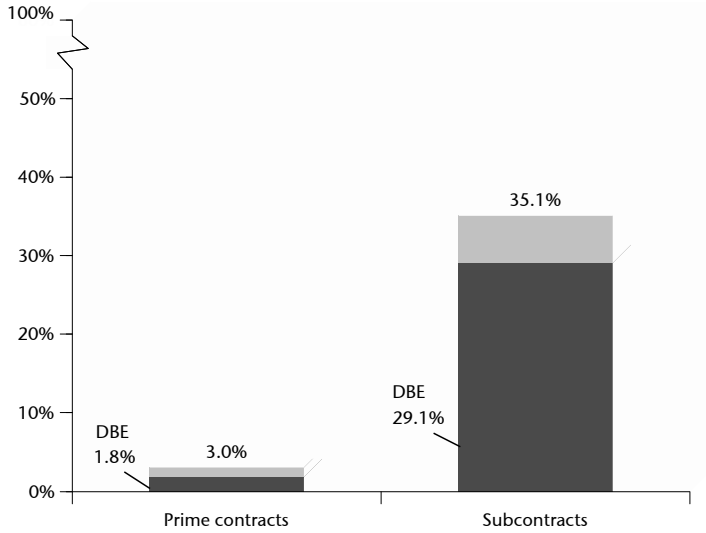
Utilization. Minority- and women-owned firms received $37 million of the $1.3 billion in prime contract dollars for GDOT's FHWA- and state-funded construction contracts from 2009 through June 2011. The $37 million of utilization was about 3 percent of total prime contract dollars. DBEs accounted for 1.8 percentage points of the 3 percent MBE/WBE utilization as prime contractors, as shown in the left side of Figure 8-2.

Subcontract dollars on GDOT construction contracts totaled $545 million from 2009 through June 2011, and minority- and women-owned firms received $191 million of this total. As shown in the right side of Figure 8-2, MBE/WBEs accounted for 35 percent of subcontract dollars on GDOT construction contracts (DBEs represented 29 percentage points of this utilization). Because most GDOT construction projects (and contract dollars) during the study period were FHWA-funded, DBE contract goals affected the results for subcontract utilization examined in Figure 8-2.

Figure 8-2.
MBE/WBE and DBE share of FHWA- and state-funded prime contract and subcontract dollars on GDOT construction projects, 2009–June 2011

Note:
Number of contracts/subcontracts analyzed is 734 for prime contracts and 3,416 for subcontracts.
For more detail and results by group see Figures K-14 and K-23 in Appendix K.

Source:
BBC Research & Consulting from GDOT contract data.



Disparity analysis. Figure 8-3 shows disparity indices for construction prime contracts (darker bars) and subcontracts (lighter bars) for each racial/ethnic/gender group. Overall, there were large disparities for MBE/WBEs for construction prime contracts (disparity index of 14) but not for subcontracts (disparity index of 143) when examined combined FHWA- and state-funded construction contracts. Results differed somewhat by racial/ethnic/gender group, however.

- Out of the 734 construction contracts examined, BBC identified no prime contracts going to African American-, Asian-Pacific American-, or Native American-owned firms. Therefore, the disparity index for construction prime contracts for each of these groups was 0. Utilization of Hispanic American-owned firms as prime contractors was also low (0.1%) compared with the availability of those firms for GDOT construction prime contracts (0.5%). The disparity index for Hispanic American-owned firms was 18.

- BBC identified 36 construction prime contracts going to white women-owned firms. WBEs received 2.6 percent of prime contract dollars for these construction contracts, still less than the 4.1 percent that might be expected based upon WBE availability for that work. The disparity index for construction prime contracts for WBEs was 63, indicating a substantial disparity.

- Although just one construction prime contract went to a Subcontinent Asian American-owned firm, the prime contract dollars were large enough ($3.4 million) that utilization of Subcontinent Asian American-owned firms was more than twice what would be expected from the availability analysis (disparity index of more than 200 as indicated in Figure 8-2).

Figure 8-3 also presents disparity indices for construction subcontracts.

Even with application of DBE contract goals for most of these construction projects, there were still disparities in the utilization of African American- and Asian-Pacific American-owned firms as subcontractors. Utilization of African American-owned firms (8.2%) was substantially below what might be expected from the availability analysis for construction subcontracts (13.8%), resulting in a disparity index of 60. Just two subcontracts went to Asian-Pacific American-owned firms. The disparity index for Asian-Pacific American-owned firms rounded to 0.

Utilization of WBEs and Subcontinent Asian American-, Hispanic American- and Native American-owned firms as subcontractors on GDOT construction contracts exceeded what might be expected from the availability analysis. Application of DBE contract goals for many of these contracts is one potential reason for these results. (Page 8 of this chapter examines results for construction subcontracts in more detail.)

Figure 8-3.
Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on GDOT FHWA-and state-funded construction projects, 2009—June 2011

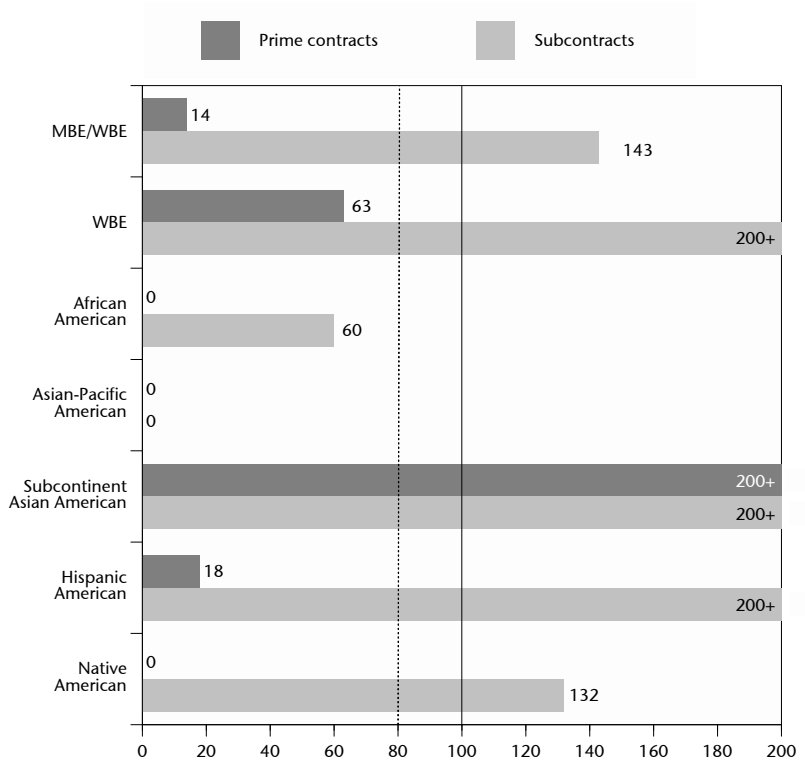
Note:

Number of contracts/subcontracts analyzed is 734 for prime contracts and 3,416 for subcontracts.

For more detail and results by group see Figures K-14 and K-23 in Appendix K.

Source:

BBC Research & Consulting.



4. Are there disparities in the use of MBE/WBE prime contractors for small construction contracts? The size of GDOT construction prime contracts may present a barrier for certain MBE/WBE groups. A number of contractors interviewed by the study team indicated that size of GDOT contracts was a barrier to bidding (see Appendix F). To explore this issue, BBC examined MBE/WBE utilization and availability as prime contractors for construction contracts of $2 million or less.

As shown in Figure 8-4, utilization of MBE/WBEs as prime contractors was only somewhat higher for small construction contracts (5%) than all contracts (4%).

Figure 8-4.
MBE/WBE and DBE share of FHWA- and state-funded construction prime contract dollars by contract size, 2009—June 2011

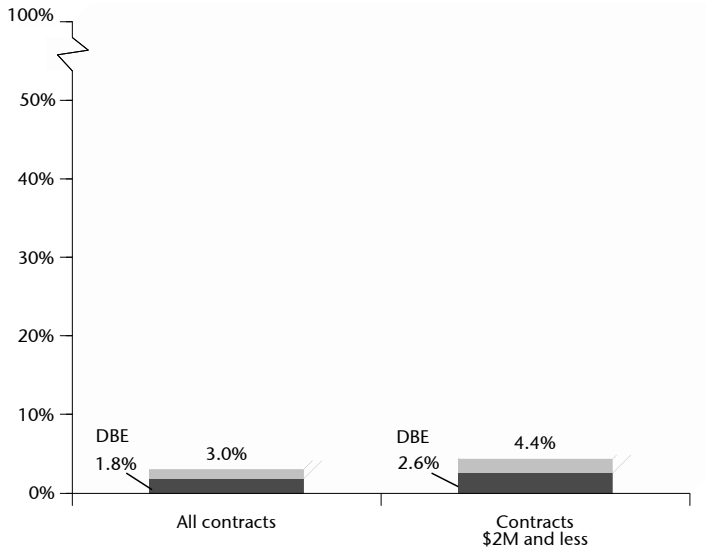
Note:

Number of all prime contracts analyzed is 734 for all contracts and 554 for contracts of $2 million and less.

For more detail and results by group see Figures K-14 and K-39 in Appendix K.

Source:

BBC Research & Consulting from GDOT contract data.



MBE/WBE utilization as prime contractors on construction contracts up to $2 million was substantially less than what might be expected from the availability analysis. The resulting disparity index for MBE/WBEs overall was 16, and there were substantial disparities for all racial/ethnic/gender groups. Figure K-39 in Appendix K presents these results.

5. Are there different results for subcontracts on FHWA-funded contracts and state-funded contracts? Utilization of minority- and women-owned firms as subcontractors on GDOT construction contracts may be affected by whether the DBE contract goals program is applied. BBC explored differences in MBE/WBE utilization as subcontractors as well as disparity results for FHWA- and state-funded contracts. (DBE contract goals only applied for FHWA-funded contracts.)

Utilization. Figure 8-5 shows that MBE/WBE utilization as subcontractors was higher for FHWA-funded construction contracts (left side of Figure 8-5) compared with state-funded construction contracts (right side of Figure 8-5). MBE/WBEs received 35 percent of subcontract dollars on FHWA-funded projects compared to25 percent for state-funded contracts. DBE-certified firms accounted for a higher portion of subcontract dollars on FHWA-funded contracts (29%) compared with state-funded contracts (17%).

White women-owned firms accounted for about two-thirds of the MBE/WBE utilization as subcontractors.

Figures K-24 and K-25 in Appendix K provide detailed information on the utilization of subcontractors by racial/ethnic/gender group.

Figure 8-5.
MBE/WBE and DBE share of GDOT FHWA- and state-funded construction subcontract dollars, 2009—June 2011

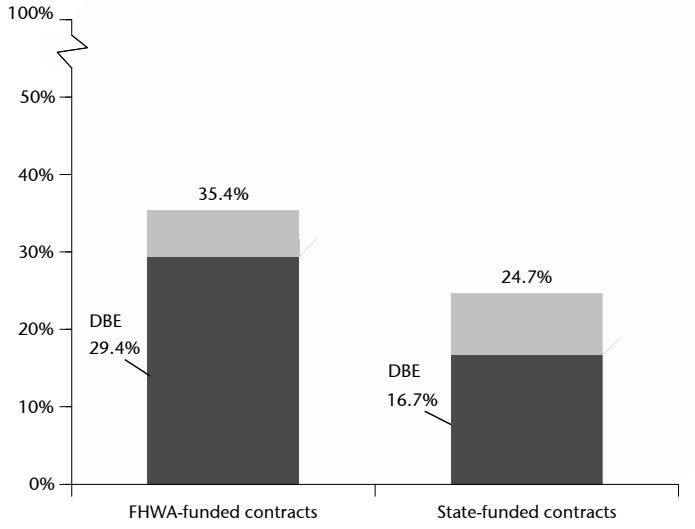
Note:

Number of subcontracts analyzed is 3,179 for the FHWA-funded contracts and 237 for state-funded contracts.

For more detail and results by group see Figures K-24 and K-25 in Appendix K.

Source:

BBC Research & Consulting from GDOT contract data.



Disparity analysis. Figure 8-6 examines disparity results for subcontracts on FHWA- and state-funded construction contracts.

- There were disparities between utilization and availability for both state-funded subcontracts (lighter bars) and FHWA-funded subcontracts (darker bars) for African American- and Asian-Pacific American-owned firms.

- Utilization of Subcontinent Asian American- and Native American-owned firms as subcontractors exceeded availability for FHWA-funded construction contracts, but none of the subcontracts examined for state-funded construction contracts went to those firms. (Again, no DBE contract goals applied to state-funded contracts.)

- Utilization of white women-owned firms and Hispanic American-owned businesses as subcontractors exceeded availability for both FHWA- and state-funded contracts.

Figure 8-6.
Disparity indices for MBE/WBE utilization as subcontractors on GDOT FHWA-and state-funded construction projects, 2009–June 2011

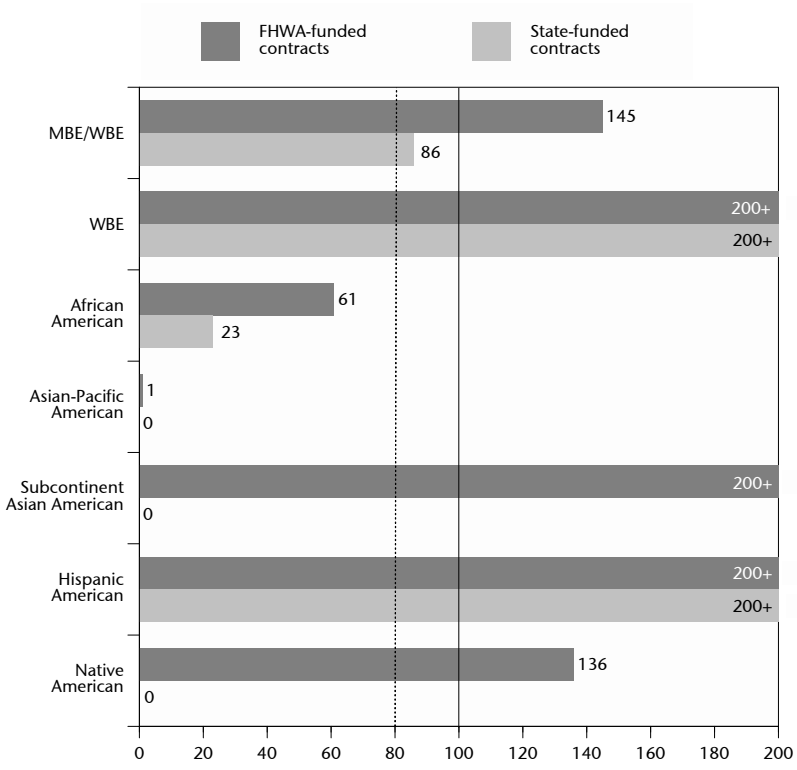
Note:

Number of subcontracts analyzed is 3,179 for the FHWA-funded contracts and 237 for state-funded contracts.

For more detail and results by group see Figures K24 and K-25 in Appendix K.

Source:

BBC Research & Consulting.

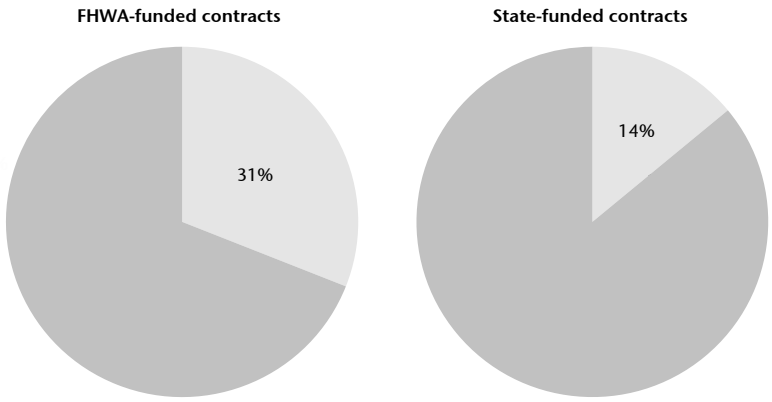


BBC also considered whether there was evidence that prime contractors self-performed more of the work (and subcontracted less of the project) when there were no DBE contract goals.

- As shown in Figure 8-7, 14 percent of state-funded construction contract dollars went to subcontractors (including MBE/WBE and non-MBE/WBEs).
- Subcontracts accounted for 31 percent of the dollars of FHWA-funded construction contracts.

In addition to DBE contract goals, factors such as types of projects may also affect the relative amount of subcontracting on FHWA- and state-funded construction contracts.

Figure 8-7.
Subcontracting as a percentage of total construction contract dollars on FHWA-and state-funded contracts, 2009–June 2011



Source: BBC Research & Consulting from GDOT contract data.

6. Does analysis of MBE/WBE bids on construction prime contracts help to explain disparity results? BBC analyzed bid information for GDOT construction contracts from 2009 through June 2011. In total, 3,246 bids were submitted for these 730 contracts.[1]

Relative number of bids from MBE/WBEs. MBE/WBEs submitted 192 (5.9%) of the 3,246 bids:

- A total of 75 bids on these prime contracts (2.3% of all bids) came from minority-owned firms (seven different firms); and
- 117 bids (3.6% of all bids) came from WBEs (eight different firms).

The proportion of bids from MBEs and from WBEs was low compared with the share of firms available for prime construction contracts that were MBEs (18%) and WBEs (14%).

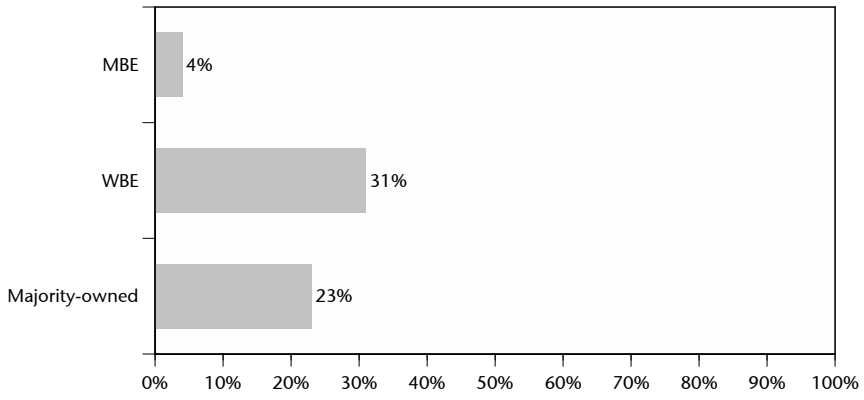
BBC also examined the proportion of firms prequalified to bid on GDOT construction prime contracts. Based on BBC's analysis of GDOT's prequalification database as of 2011, 7 percent of prequalified firms were MBEs and 11 percent were WBEs.[2] MBEs' and WBEs' share of bids on GDOT construction prime contracts was also below what might be indicated from the representation of MBEs and WBEs in GDOT's prequalification database. (Prequalification for GDOT construction contracts is discussed in detail in the following pages.)

Success of bids. As shown in Figure 8-8, just 4 percent of the bids submitted by MBEs resulted in contract awards, far below the 23 percent win rate found for majority-owned firms and 31 percent win rate for WBEs.

Figure 8-8.
Proportion of bids on GDOT construction contracts that were winning bids, 2009–June 2011

Note:
Based on analysis of 3,246 bids on 730 contracts.

Source:
BBC Research & Consulting from GDOT contract records.



7. Do GDOTs bid processes for construction contracts explain any of the disparities? BBC further explored the success rate of MBE bidders on construction contracts, and why the number of bids from MBEs and WBEs were less than what might be expected given representation of MBE/WBEs among transportation construction prime contractors.

[1] The 730 contracts account for nearly all GDOT construction contracts examined as part of this study. Bid data were not available for a small number of construction contracts.

[2] Subcontractors go through a similar "registration" process. MBEs accounted for 25 percent and WBEs were 28 percent of preregistered firms in 2011 based upon BBC's analysis.

GDOT awards construction contracts to low bidders (that are deemed responsive and responsible). Compared with other groups, BBC found that MBE bidders were much less likely to be the low bidder among the bids examined. There was no indication that MBE bids were not considered by GDOT.

BBC examined GDOT requirements for bidding on its construction contracts, processes for notifying potential bidders of construction contract opportunities, and methods for selecting a prime contractor to perform the work to further explore the relative number of MBE and WBE bids.

State code. Georgia Code Title 32 governs maintenance and construction of public roads and services ancillary to that mission, such as consulting. GDOT follows these requirements and other state law pertaining to public works contracts in its contracting practices.

Bonding. Payment and performance bonds are required under Georgia state law for public works contracts estimated to exceed $100,000. Bidders on GDOT construction contracts are also required to submit a bid bond.

As discussed in Chapter 4, BBC asked firms completing availability telephone interviews:

- Has your company obtained or tried to obtain a bond for a project?

- [and if so] Has your company had any difficulties obtaining bonds needed for a project?

Among firms reporting that they had obtained or tried to obtain a bond, minority- and women-owned firms were more than twice as likely as majority-owned firms to report difficulties. This information suggests that the bonding requirements on public works contracts in Georgia may have a negative impact on minority- and women-owned firms.

Advertisement of invitations to bid. Public bidding of GDOT construction contracts is generally required for contracts exceeding $100,000. BBC researched how GDOT makes construction contract opportunities known to potential bidders.

- GDOT advertises construction contract bid opportunities on its website. Prime contractors, subcontractors and suppliers interested in a project can download needed bid documents from the GDOT website.

- Private bid services such as Dodge Reports also provide information on GDOT contracts that are available for bid.

It does not appear difficult to learn of GDOT contract opportunities if potential bidders are familiar with GDOT's process for communicating those opportunities. As discussed in Chapter 4, however, BBC's telephone interviews with transportation contracting firms in Georgia conducted as part of the availability analysis found that minority- and women-owned firms were more likely than majority-owned firms to identify learning of GDOT bid opportunities as a barrier to doing business. (Further GDOT research may be warranted to explore why minority- and women-owned firms were more likely to report difficulties learning of GDOT bid opportunities.)

Bid process. Firms seeking to bid on a GDOT construction prime contract follow the process below:

- The firm must be prequalified for the GDOT project.
- The business must submit a request for eligibility to bid (at no charge).[3]
- The firm submits a bid through GDOT's electronic bidding system.

Prequalification is discussed below.

Prequalification requirement for construction prime contractors (and certain subcontractors). GDOT applies the prequalification requirement for construction contracts over $2 million.[4] [5]

General requirements for GDOT prequalification are set forth in state law:

- GDOT must prequalify firms before they can be eligible to bid on certain construction contracts or perform work as a subcontractor on a GDOT contract. [6]
- Every contractor desiring to be qualified to bid or subcontract must file an application including, among other information:
  - A financial statement;
  - A complete questionnaire regarding the contractor's organization and the work performed by such contractor; and
  - A statement of equipment owned or leased by such contractor.
- GDOT must assign "maximum capacity" ratings to contractors and subcontractors.

[3] Prior to the bid letting date, GDOT posts the Eligible Bidders List for each contract, noting where the eligible bidder is a subcontractor, manufacturer or supplier.

[4] Prime contractors do not have to be prequalified to bid on GDOT construction contracts less than $2 million as long as they have no more than $4 million in remaining work on their current combined GDOT and non-GDOT contracts. If the additional contract would put a contractor over $4 million in current GDOT work, the firm must be prequalified in order to bid on that contract.

[5] According to GDOT staff, many firms seek prequalification with GDOT because it helps them win work with local governments, even if they have no intention of bidding on future GDOT work.

[6] There are certain waivers available for specialty trade contractors.

The prequalification process appears to have four effects on potential prime contractors:

- During the study period, the time required for submission and GDOT consideration of prequalification information may have delayed some firms from being able to bid on GDOT construction contracts of $2 million or more, although GDOT has recently shortened its approval timeframe.[7]

- Firms can be denied the opportunity to bid on GDOT contracts of $2 million or more if they do not pass the prequalification process.

- Once they are prequalified, GDOT's requirements limit the size of GDOT prime contracts firms can pursue.

- Businesses are limited in the total dollar amount of GDOT work they can have under contract that remains to be performed, as explained below.

GDOT tracks the current work of an apparent low bidder through a "certification of capacity" submitted by the contractor. Within one day of being the apparent low bidder, the prime must submit a list of its current contracts with remaining contract amounts. If a bidder is apparent low bidder on multiple GDOT contracts during one bid letting, the bid review committee can decide whether to still award it the new work. If a firm is not prequalified for the combined amount, GDOT could defer the award until the firm gets properly prequalified.

GDOT calculates a "maximum capacity" rating for contractor prequalification through a somewhat complicated formula:

- GDOT begins by scoring the contractor's past work performance on GDOT contracts (scale from 0 to 10, with 10 as the highest score), and then doubles that value to get an "ability factor."

- GDOT then makes a financial calculation that considers the firm's assets and liabilities. The financial calculation subtracts the firm's current liabilities from its current assets and then adds in the value of plant and equipment used for road construction (with some consideration of net deferred assets[8]).

- The "maximum capacity" factor is calculated by multiplying the "ability factor" by the result of the financial calculations.

Capacity is a snapshot at a certain time, and firms can request to be re-evaluated after projects are completed. GDOT's prequalification process for construction contractors does not consider work classes.

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[7] GDOT reported that there was a backlog of prequalification processing in the past few years because stimulus funding and the poor economy created more interest in public sector work in the transportation contracting industry. Sometimes it took six months to be approved, but the process could require 24 months depending on the firm. GDOT reports that, as of 2012, the GDOT approval process typically requires about two weeks.

[8] A value equal to 60 percent of net deferred assets (other assets not used for road & bridge) less deferred liabilities (longer than 1 year) is added to the value of current assets less current liabilities.

This process appears to generate higher "capacity" values for contractors that:

- Have worked for GDOT in the past and have received high scores for that work.[9]
- Have more equity in the firm, especially cash and accounts receivable compared with their current liabilities.
- Have more plant and equipment used for road construction.

The past experience factor may perpetuate disparities in the utilization of minority- and women-owned firms on GDOT construction contracts identified in this report.

- Firms that have not had experience on GDOT contracts have more difficulty obtaining high "capacity" values.
- Firms that have worked with GDOT are rated by GDOT staff. As with any subjective evaluation process, GDOT's system opens the possibility that firms may receive lower ratings for work based on factors that are not supported by actual performance. GDOT has some controls in place so that a negative perception of one staff person does not necessarily determine the capacity score a firm receives.[10]

Chapter 4 and related appendices in this report provide some evidence that there is not a level playing field for minority- and women-owned firms. Although the financial component of the "maximum capacity" rating may disadvantage any small firm attempting to work with GDOT as a prime contractor, it appears that it may have more negative impact on minority- and women-owned firms.

As explained below, businesses performing large subcontracts often need to go through a prequalification process as well, even if they do not bid as prime contractors.

Registration requirement for subcontractors. Subcontractors must be registered by GDOT to perform subcontracts on GDOT construction projects. The process for determining bid capacity for subcontractors is similar to prequalification for prime contractors, except that it is solely based on GDOT evaluation of "ability" with no consideration of financial information. (A number of years ago, GDOT only required registration for subcontractors with work over $500,000.)

Subcontractor bid capacity is calculated by multiplying a firm's "ability factor" by a standard financial rating set at $110,000. If the ability score is "5.5" for the firm, its ability is then 11 (after doubling the score). The firm's bid capacity would then be 11 multiplied by the standard $110,000 financial

[9] Because firms that have not worked with GDOT have no evaluation scores for past GDOT projects, GDOT applies a default evaluation score of 5.5 for new contractors, which leads to an ability factor of 11 (after doubling the score), as long as the contractor provides sufficient letters of recommendation from other clients to support that figure.

[10] GDOT rates work performance of each contractor and subcontractor for each GDOT construction contract, or every 12 months if the contract runs longer than a year. The project manager at the district level is responsible for the scoring. Construction staff at GDOT headquarters sign off on the rating. A three-person committee at GDOT reviews prequalification applications.

rating, or $1.21 million. The maximum bid capacity resulting from subcontractor registration is $2.2 million if it received an evaluation score of 10, which is then doubled and multiplied by $110,000.[11]

As with prime contractors that are new to GDOT, a new subcontractor has no rating of its past projects. The new subcontractor receives a score of 5.5 (if supported by references), which translates to an ability factor of 11. Multiplying by $110,000, this new subcontractor would have a bid capacity of $1.21 million.

If a firm has not done prior GDOT work (which means it has a bid capacity of $1.21 million), and it seeks to perform a $1.5 million subcontract, the firm would have to go through the prequalification process to attempt to be granted a higher bid capacity figure. This is also true for subcontractors that would exceed their bid capacity with the new GDOT subcontract added to their current work. GDOT evaluates subcontractors' certification of capacity prior to approving the subcontractor for a new GDOT contract.

D. Are there disparities for GDOT engineering contracts?

As with construction contracts, BBC further analyzed GDOT engineering-related contracts:

1. Are there disparities for GDOT engineering-related contracts?

2. Do results differ for engineering prime contracts and subcontracts?

3. Are there different results for small engineering prime contracts?

4. How does GDOT notify firms of engineering-related contract opportunities?

5. Does GDOT's consultant selection process explain any of the disparities?

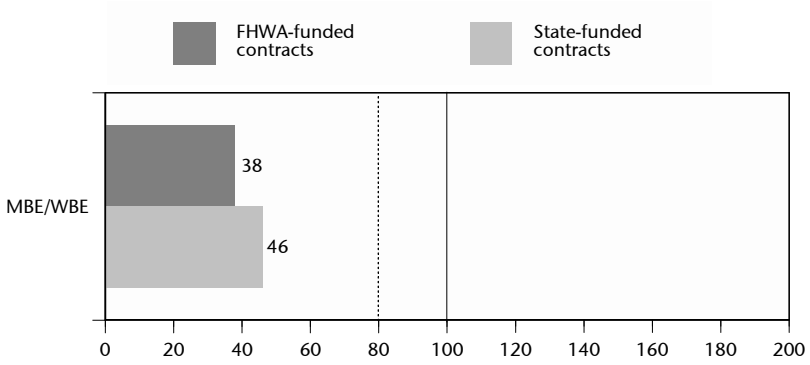
[11] A three-person committee at GDOT reviews registration applications.

1. Are there disparities for MBEs and WBEs on GDOT engineering-related contracts?
BBC also examined GDOT engineering-related contracts from 2009 through June 2011. Chapter 6 presents MBE/WBE utilization — 9.5 percent — for combined FHWA- and state-funded engineering-related contracts. As the availability analysis indicates that 24.5 percent of GDOT's engineering-related contract dollars might be expected to go to minority- and women-owned firms, the actual level of utilization was substantially below availability even with DBE goals applied on certain FHWA-funded contracts. (Figure K-8 in Appendix K provides these results.)

Similar to the analysis of GDOT construction contracts, BBC separately examined MBE/WBE utilization and availability for GDOT FHWA- and state-funded engineering contracts. No DBE contract goals applied to state-funded contracts. Because of the small number of state-funded contracts (28), Figure 8-9 focuses on combined results for MBE/WBEs.

As shown in Figure 8-9, there were disparities between the utilization and availability of MBE/WBEs on both FHWA- and state-funded engineering contracts. The disparity index for minority- and women-owned firms on state-funded engineering-related contracts was 46, similar to the index of 38 for FHWA-funded contracts. For state-funded contracts, utilization was below availability for each MBE/WBE group. There were disparities on FHWA-funded contracts for each group except for Hispanic American-owned firms. Figures K-9 and K-10 in Appendix K provide detailed results.

Figure 8-9.
Disparity indices for MBE/WBE utilization as prime contractors and subcontractors on GDOT FHWA- and state-funded engineering contracts, 2009–June 2011



Note:
Number of contracts/subcontracts analyzed is 650 for FHWA-funded and 38 for state-funded contracts.
For more detail, see Figures K-9 and K-10 in Appendix K.

Source:
BBC Research & Consulting.

2. Do results differ for prime contracts and subcontracts? BBC examined MBE/WBE utilization and availability as prime consultants and subconsultants on GDOT engineering-related contracts.

Utilization. Minority- and women-owned firms received $8.6 million out of the $167 million of GDOT engineering-related prime contract dollars from 2009 through June 2011. This represents a 5.2 percent level of participation for MBE/WBEs as prime consultants in engineering contracts. As shown in Figure 8-10, DBEs accounted for about one-half of the utilization of MBE/WBE prime consultants.

About $9.6 million of the $25 million of engineering-related subcontract dollars went to minority- and women-owned firms, 38 percent of GDOT engineering-related subcontract dollars. DBEs accounted for most of the dollars going to MBE/WBE subconsultants.

Figure 8-10.
MBE/WBE and DBE share of FHWA-and state-funded prime contract and subcontract dollars on GDOT engineering-related contracts, 2009–June 2011

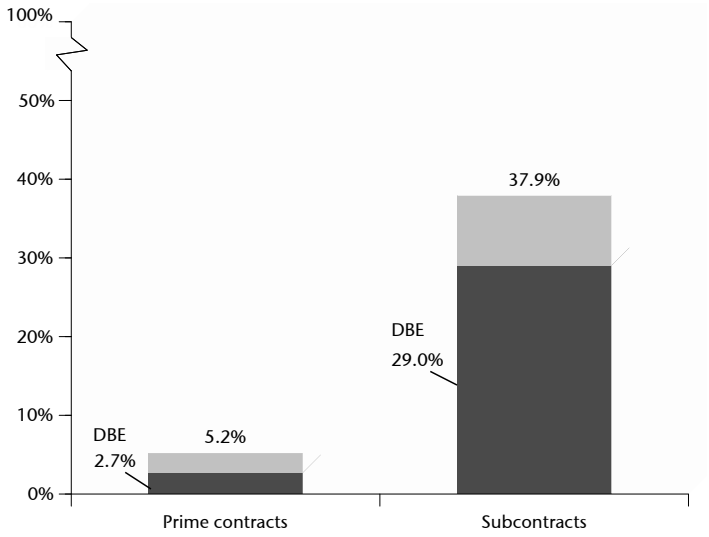
Note:

Number of contracts/subcontracts analyzed is 406 for prime contracts and 282 for subcontracts.

For more detail and results by group see Figures K-17 and K-26 in Appendix K.

Source:

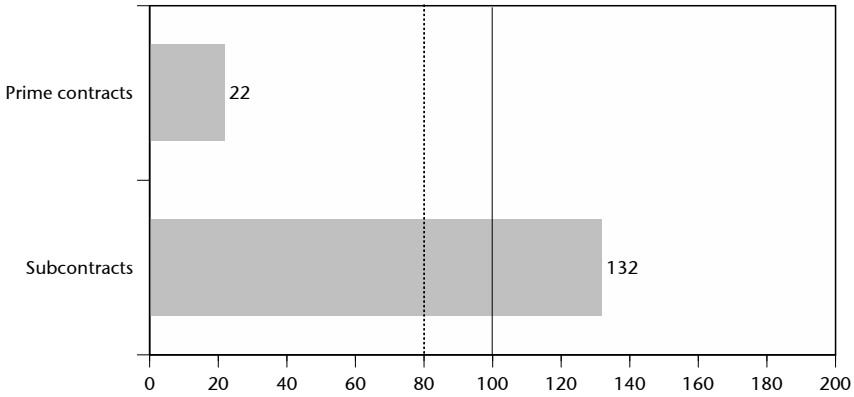
BBC Research & Consulting from GDOT contract data.



Disparity analysis. BBC identified disparities between MBE/WBE utilization and availability for engineering prime contracts. Utilization of MBE/WBEs on GDOT engineering subcontracts exceeded availability (disparity index of 132).

Figure 8-11 summarizes disparity results for MBE/WBEs overall. Figures K-17 and K-26 present disparity results for individual groups.

Figure 8-11.
Disparity indices for MBE/WBE utilization as prime consultants and subconsultants on GDOT FHWA-and state-funded engineering-related contracts, 2009–June 2011



Note:
Number of contracts/subcontracts analyzed is 406 for prime contracts and 282 for subcontracts.
For more detail and results by group see Figures K-17 and K-26 in Appendix K.

Source:
BBC Research & Consulting.

Figure K-28 in Appendix K provides disparity results for subcontracts on state-funded engineering contracts, which did not have DBE contract goals. Because only 10 subcontracts were identified, it is difficult to draw any conclusions from these results.

Subcontracting as a percentage of engineering contract dollars. Subcontract data collected by BBC indicated that subcontract dollars accounted for 13 percent of engineering-related contract dollars (MBE/WBE and non-MBE/WBE subcontractors) during the study period.

3. Are there different results for small prime contracts? The study team examined whether the size of GDOT engineering-related contracts may be a barrier for MBE/WBEs. During the study period, about three-quarters of engineering-related contracts were $500,000 or less (accounting for one-sixth of total dollars going to prime consultants on engineering contracts.

As shown in Figure 8-12, utilization of MBE/WBEs as prime consultants on small contracts (3.6%) was less than for all engineering-related contracts (5.2%).

Figure 8-12.
MBE/WBE and DBE share of GDOT FHWA- and state-funded engineering prime contract dollars by contract size, 2009—June 2011

Note:

Number of all contracts analyzed is 406 for all contracts and 307 for contracts of $500,000 and less.

For more detail and results by group see Figures K-17 and K-40 in Appendix K.

Source:

BBC Research & Consulting from GDOT contract data.

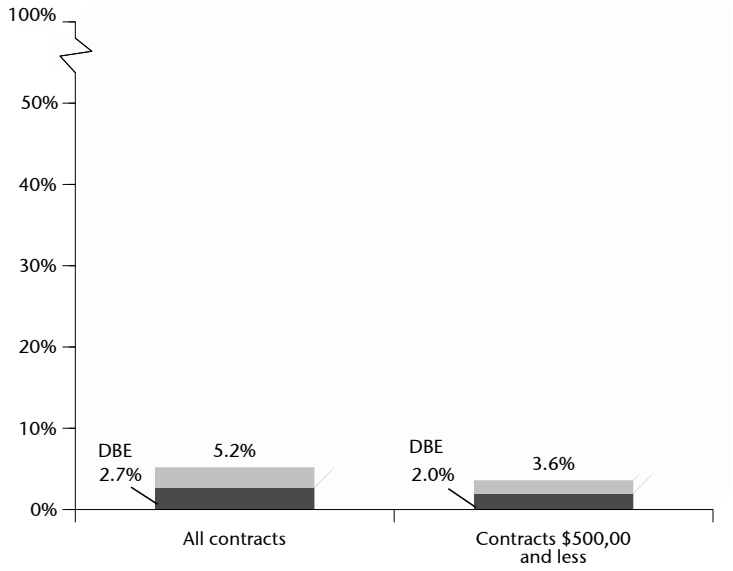


Figure 8-13 shows overall MBE/WBE disparity indices for MBE/WBEs as prime consultants for all engineering-related contracts and for contracts of $500,000 or less. The disparity index of 14 indicates a substantial disparity for MBE/WBEs as prime consultants on GDOT's small engineering-related contracts, similar to the index of 22 found for prime contracts of all sizes.

Figure K-40 in Appendix K presents detailed results for individual MBE/WBE groups.

Figure 8-13.
Disparity indices for MBE/WBE utilization as prime consultants on small and all GDOT FHWA-and state-funded engineering-related contracts, 2009—June 2011

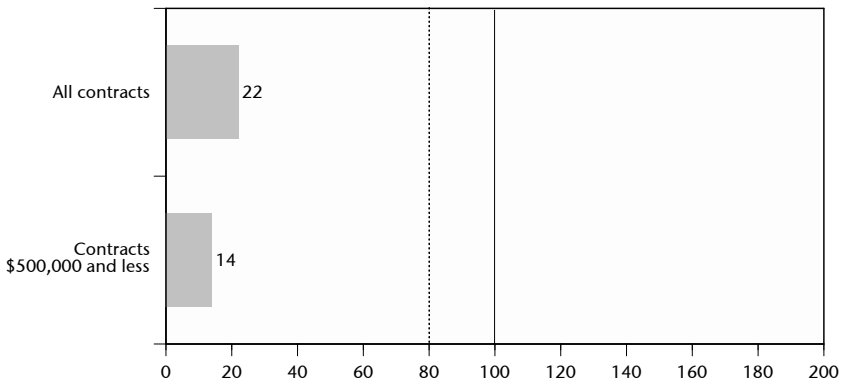
Note:

Number of all contracts analyzed is 406 for all contracts and 307 for contracts of $500,000 and less.

For more detail and results by group see Figures K-17 and K-40 in Appendix K.

Source:

BBC Research & Consulting.



4. How does GDOT notify firms of engineering-related contract opportunities? As with construction contracts, BBC reviewed GDOT's process for advertising engineering-related contract opportunities.

GDOT participates in the Georgia Procurement Registry, an online service operated by the Georgia Department of Administrative Services that notifies firms of public sector contract opportunities.

- Firms that wish to be notified of GDOT engineering-related contracts and other state and local agency contracts can subscribe to be notified of certain types of work.
- Subscribed firms are then notified when opportunities that match a firm's capabilities are posted to the registry.
- The service is free for participating firms.

This registry is the only method GDOT uses to notify firms for specific engineering-related contracts. However, GDOT does post a general schedule of projected consultant "acquisition needs" for each year on an annual basis.

As with GDOT's process for communicating construction contract opportunities, the Procurement Registry appears to be an effective means of notifying potential proposers of GDOT's engineering-related contracts as long as firms are aware of this process. (GDOT does not appear to explain the Registry or provide a link on the GDOT "Doing Business" or "Consultants" pages of its website.)

5. Does GDOT's consultant selection process explain any of the disparities? GDOT uses a qualifications-based selection process to award engineering-related contracts. Firms competing for GDOT engineering-related contracts must first be prequalified by GDOT.

Prequalification. Compared to GDOT's prequalification of construction contractors, which focuses on the *amount* of work GDOT will allow a contractor to perform at one time, GDOT's consultant prequalification process focuses on the *types* of work it will allow a firm to conduct.

GDOT specifies general classes of work (such as bridge design) that may then have many specific "area classes" for which consultants must seek GDOT prequalification. Each firm applies for GDOT prequalification by specific area class (often for multiple area classes). GDOT considers firm qualifications to perform an area class and may approve a firm for some area classes and not others. Prequalification for consultants typically takes one month, and involves a vote of a standing GDOT staff committee. Firms seeking prime contracts and firms seeking subcontracts go through the same prequalification process.

BBC examined the representation of minority- and women-owned firms among all GDOT prequalified consultants — 16 percent of prequalified firms were MBEs and 12 percent were WBEs. The proportion of GDOT prequalified firms that are MBEs and WBEs is similar to the proportion of firms in BBC's availability analysis for GDOT engineering-related prime contracts that were minority- and women-owned (15% and 8%, respectively).

Representation on the prequalification list for GDOT engineering-related contracts is only one factor in obtaining GDOT work; approval for work in specific area classes is also important. The study team

collected and analyzed prequalification evaluation results for 1,754 individual area class applications (made by 166 individual firms). Figure 8-14 presents the proportion of approvals of area class prequalification for minority-, women- and majority-owned businesses.

- MBEs submitted 215 area class applications and had 47 percent approved, less than the 68 percent rate at which majority-owned firms had area class applications approved.

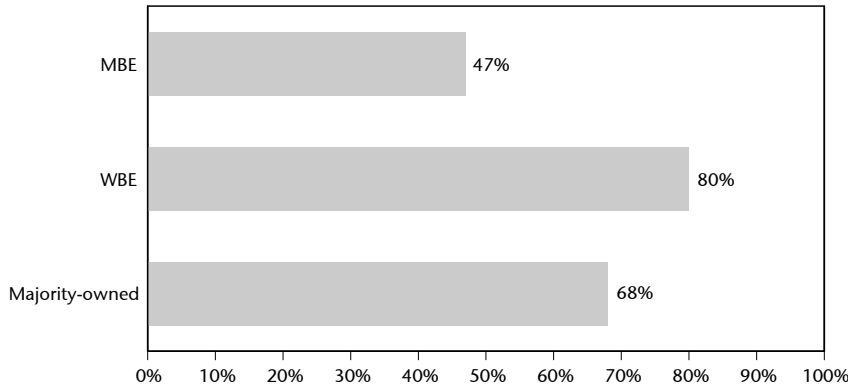
- WBEs submitted 118 applications and were approved about 80 percent of the time.

It appears that MBEs are not as successful as WBEs and majority-owned firms when applying for area class prequalification. Figure 8-14 shows these results.

Figure 8-14.
Proportion of area class applications approved by approval on GDOT, 2009—June 2011

Note:
Based on 1,754 area-applications (MBE=215, WBE=118, majority=1,421).

Source:
BBC Research & Consulting from GDOT records.



Selection process. Prequalification for engineering-related contracts does not necessarily mean that a firm will receive any GDOT work. Once they are prequalified for specific area classes, firms must learn of and submit qualifications statements for specific GDOT contracts. (Note that the prime consultant's qualifications can be supplemented by subconsultants participating in a team.)

GDOT typically begins the consultant selection process for a specific engineering-related contract by requesting that consultants respond to requests for qualifications, which are evaluated by a committee within GDOT. (Responses to RFQs are referred to as "proposals" in this report.) The GDOT committee typically evaluates consultants based on the following criteria:

- **Stability and resources.** One of the evaluation factors is the financial stability, litigation history and general history of the firm.

- **Experience and qualifications.** Evaluators consider the experience and qualifications of the proposed consultant team in light of the scope of the project, work classes involved, and GDOT policies.

- **Suitability.** GDOT reviews the ability of the firm to do the work, including specialized qualifications and the capacity of the consultant team to accomplish the work given current staff workloads.

- **Past performance.** Past performance of the firm is also considered during the evaluation process, which may include references from GDOT and other past projects well as GDOT selection committee members' experience with the firm.

From the list of consultants that submit proposals, the GDOT committee selects a "short list" of consultants to be asked to an interview. GDOT typically includes at least the three highest-ranking consultants in the interview process. The committee then determines the award based on an evaluation of the interview and the firm's past performance. In accordance with regulations regarding qualifications-based procurement, GDOT negotiates price after the consultant is selected.

BBC analyzed MBE and WBE success when competing for engineering-related contracts.

- The study team was able to collect and analyze proposal evaluation data for 28 GDOT engineering-related projects for contracts executed during the study period. Of the 167 proposals submitted, six (4%) were submitted by MBEs and 12 (7%) were submitted by WBEs.

- The proportion of proposal submissions from MBEs and WBEs was low compared with the share of prequalified firms that were MBEs (16%) and WBEs (12%).

There were disparities in percentage of proposals that were short-listed by GDOT. The top portion of Figure 8-15 illustrates that:

- Only one of the proposals from MBEs (17% of MBE proposals) resulted in short-listing;

- Three-quarters (75%) of proposals from WBEs were short-listed; and

- About 55 percent of majority-owned firms' proposals were placed on the short list.

As shown in the lower portion of Figure 8-15, BBC also calculated the percentage of proposal submissions that resulted in contract awards:

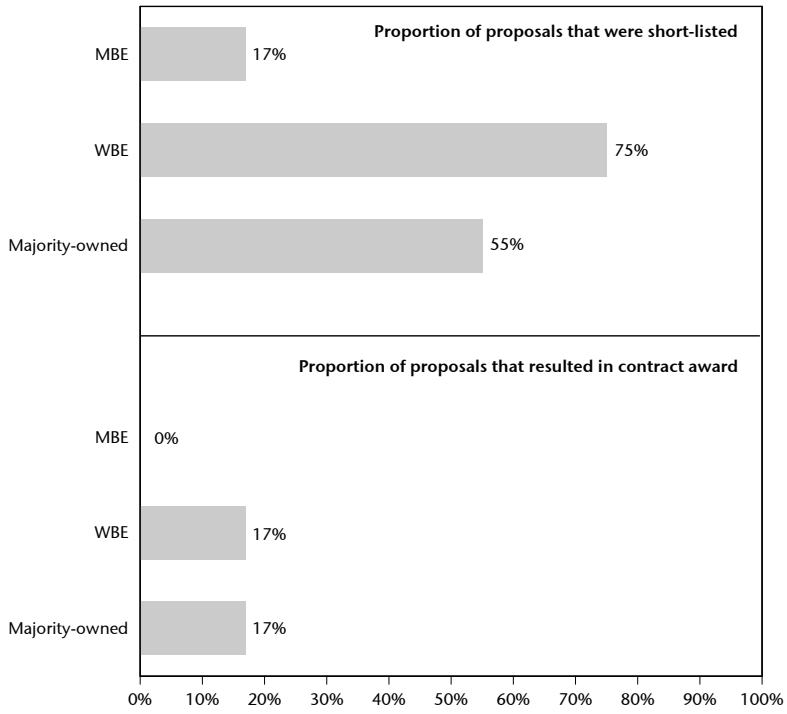
- None of the six proposals from MBEs resulted in a contract award (0% success).
- Two proposals from WBEs resulted in an award, a success rate of 17 percent.
- All but two of the analyzed contract awards went to majority-owned firms (26 awards from 149 submissions for a success rate of 17%).

WBEs experienced a similar success rate to majority firms on these projects.

Figure 8-15.
Proportion of proposals for GDOT engineering-related contracts that were short-listed and that resulted in contract awards, 2009–June 2011

Note:
Based on 28 awards (167 proposals).

Source:
BBC Research & Consulting from GDOT contract records.



For the 167 proposal submissions received on 28 engineering-related projects, BBC compared the proposal evaluation scores received by majority-owned firms with those received by MBEs and WBEs. On average, scores GDOT gave to the group of MBE proposals were lower than scores assigned to majority-owned firms in three of the four evaluation categories:

- Stability and resources;
- Experience and qualifications; and
- Suitability.

In the past performance category, MBE proposals averaged about the same score as majority firms. The differences in average scores identified for MBEs were not evident when examining scores for WBEs.

In sum, it appears that GDOT receives fewer proposals from MBEs and WBEs than might be expected given MBE/WBE representation among all prequalified firms and from BBC's analysis of the availability of MBE/WBEs for engineering-related prime contracts. White women-owned firms submitting proposals appeared to have similar success as majority-owned firms that proposed on GDOT contracts. Although the number of proposals from minority-owned firms was small, somewhat limiting the analysis, it appears that MBE proposers did not have the same success pursuing GDOT contracts as other firms.

E. Is there any evidence of "overconcentration" of DBEs in certain types of work?

The Federal DBE Program requires agencies implementing the program to take certain steps if they determine that "DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work" (see 49 CFR Section 26.33(a)).

The Federal DBE Program does not specifically define "overconcentration." For purposes of examining this issue, BBC examined:

- How DBE participation was distributed across subindustries;
- Whether DBEs obtained more than one-half of the subcontract dollars in any construction or engineering-related subindustry; and
- If so, whether firms in those subindustries tended to only work in those subindustries, as subcontractors on public sector contracts, or also work in other subindustries (or as prime contractors or in the private sector).

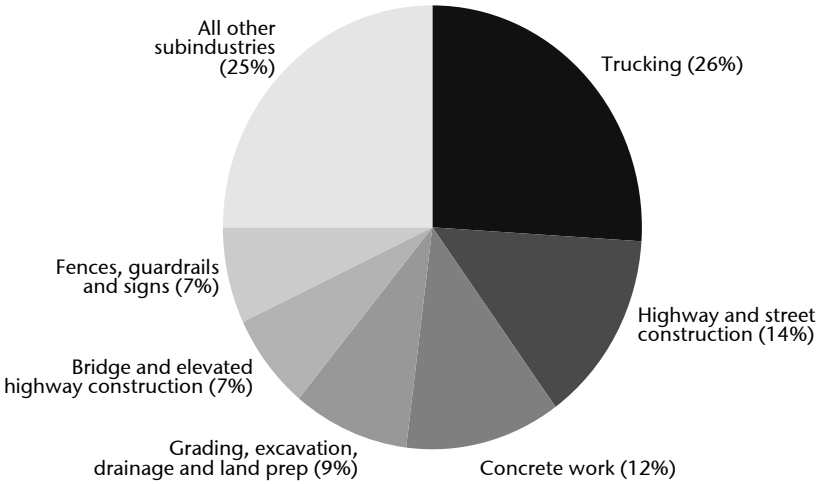
BBC focused on subcontract dollars awarded to DBEs and all firms by subindustry. All subcontract dollars for which BBC had data were examined, including FHWA- and state-funded contracts for both GDOT and local agencies.

Distribution of DBE participation across subindustries. About one-quarter of DBE subcontract dollars identified in GDOT and local agency contracts went to trucking firms. Beyond this subindustry, no other construction or engineering-related subindustry accounted for more than 14 percent of DBE subcontract dollars. Figure 8-16 examines these results.

Figure 8-16. Distribution of DBE subcontract dollars by subindustry for GDOT and local agency construction and engineering-related contracts, 2009—June 2011

Source:

BBC Research & Consulting from GDOT contract data.



DBE share of total subcontract dollars within a subindustry. There were two subindustries for which DBEs obtained more than one-half of subcontract dollars based upon GDOT and local agency contract information:

- DBEs accounted for 72 percent of subcontract dollars related to trucking; and
- DBEs obtained 56 percent of the subcontract dollars going to fencing, guardrails and signs.

It is possible that not all trucking dollars for non-DBEs were included in GDOT contract data, so the 72 percent figure may somewhat overstate the percentage of dollars going to DBEs. (Note that about one-half of the DBE dollars for trucking on GDOT contracts went to white women-owned firms.)

Degree of specialization of firms in the trucking subindustry. BBC further researched information concerning firms available for trucking work on GDOT contracts. From information provided by firms available for trucking and hauling work in the availability telephone interviews conducted as part of this study, it appears that:

- About one-third of firms available for GDOT trucking work also perform work outside of trucking and hauling;
- About 90 percent of the firms available for GDOT trucking work also pursue work on private sector contracts.

Therefore, it appears that many firms available for GDOT trucking work do not solely specialize in public sector (or GDOT) trucking subcontracts.

F. Summary

Chapter 8 explored five areas of questions:

- Are disparities found in some regions of the state and not in others?
- Is there any difference in disparities for 2009 compared with January 2010 through June 2011?
- Are there disparities for GDOT construction contracts?
- Are there disparities for GDOT engineering contracts?
- Is there any evidence of "overconcentration" of DBEs in certain types of work?

Results by region. BBC's analysis identified overall disparities in the utilization of MBE/WBEs across regions of the state.

Results by time period. There were disparities in the use of MBE/WBEs on GDOT contracts in 2009 and from 2010 through June 2011.

GDOT construction contracts. There were disparities for MBW/WBEs overall for state-funded construction contracts, and for FHWA-funded contracts even with application of the DBE contract goals program. On state-funded contracts, there were substantial disparities for white women-owned businesses and African American-, Asian-Pacific American, Subcontinent Asian American-, Hispanic American- and Native American-owned firms.

There were disparities in the utilization of MBEs and WBEs as prime contractors on GDOT construction contracts (except for Subcontinent Asian American-owned firms). There were disparities in the utilization of MBE/WBEs on small construction contracts.

MBE/WBEs received about 35 percent of subcontract dollars on GDOT FHWA-funded construction contracts and about 25 percent of subcontract dollars on state-funded contracts. In general, utilization of MBEs and WBEs as subcontractors on GDOT's FHWA-funded construction contracts exceeded what might be expected from the availability analysis. Utilization of African American- and Asian-Pacific American-owned firms as subcontractors was below what might be expected from the availability analysis, even with application of DBE contract goals to most of these contracts.

A number of aspects of GDOT's process for awarding prime construction contracts appeared to negatively affect contract opportunities for small contractors. These components may have more of a negative effect on minority- and women-owned firms. Although such components are required by state law, there may be some opportunities for GDOT to mitigate these potential negative impacts, as discussed later in this report.

GDOT engineering-related contracts. There were disparities in the utilization of MBE/WBEs in GDOT engineering-related contracts. BBC identified disparities for both FHWA-funded and state-funded contracts.

Disparities in the utilization of MBE/WBEs in engineering-related contracts are primarily due to very low utilization of minority- and women-owned firms as prime consultants, even on small contracts.

In part because of application of DBE contract goals, utilization of MBE/WBEs on GDOT engineering-related subcontracts exceeded what might be expected based on the availability analysis.

BBC's review of MBE/WBE participation in each stage of GDOT's process for awarding engineering-related contracts identified some evidence of disadvantages for minority-owned firms. Although the prequalification process authorizes engineering-related firms for GDOT work without regard to financial history, the selection process for individual proposals includes evaluation of the financial capacity and proposed workload of the firm. Financial capacity and workload requirements may present barriers to any small business, but analysis indicates MBEs were disproportionately affected.

Analysis of potential overconcentration. When considering DBE participation by type of work, BBC identified that DBE trucking firms accounted for about one-quarter of GDOT and local agency contract dollars. About 72 percent of the trucking work identified in GDOT and local agency contract data went to DBEs (about one-half to white women-owned DBEs and one-half to minority-owned DBEs). In accordance with 49 CFR Section 26.33, GDOT may need to consider steps to ensure that future DBE participation is not overconcentrated in trucking. Chapter 12 further discusses this issue.